

INTERGOVERNMENTAL RELATIONS COMMITTEE

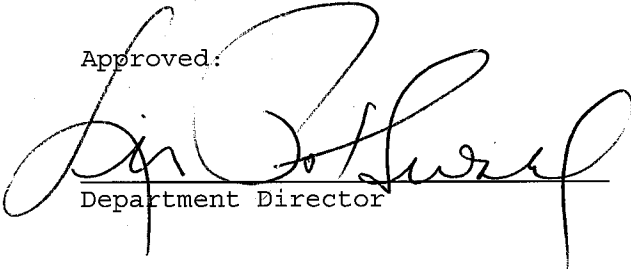
11-0287R

RESOLUTION AUTHORIZING THE EXECUTION OF A 25 YEAR COOPERATIVE AGREEMENT WITH THE STATE OF MINNESOTA DEPARTMENT OF NATURAL RESOURCES FOR THE INSTALLATION AND ONGOING MAINTENANCE OF A NEW FISHING PIER AT BOY SCOUT LANDING ON THE ST. LOUIS RIVER IN THE GARY-NEW DULUTH AREA

CITY PROPOSAL:

RESOLVED, that the proper city officers are hereby authorized to execute a twenty-five (25) year cooperative maintenance agreement filed with the city clerk as Public Document No. _____ with the state of Minnesota, department of natural resources, for the removal of the existing fishing pier and replacement with a new fishing pier at boy scout landing, all at no cost to the city.

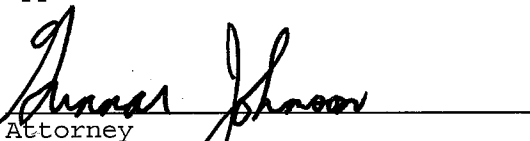
Approved:


Department Director

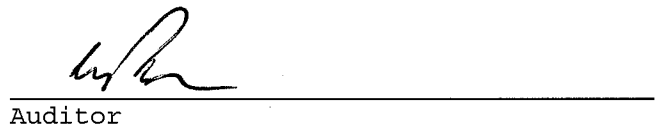
Approved for presentation to council:


Chief Administrative Officer

Approved as to form:


Attorney

Approved:


Auditor

BD TH:bel 5/27/2011

STATEMENT OF PURPOSE: This resolution authorizes an agreement between the City and DNR whereby the DNR, with City assistance, will remove the existing floating fishing pier at Boy Scout Landing in Gary-New Duluth and replace it with a new, similar, floating fishing pier. This agreement

supersedes and renews the original Boy Scout Landing Improvement agreement entered into in 1981, as authorized via Resolution 81-0648. DNR will provide the fishing pier at State of Minnesota expense with the City contributing staff and equipment toward this cooperative effort.

**ST. LOUIS RIVER, BOY SCOUT LANDING, PUBLIC FISHING PIER
LAND USE, OPERATIONS AND MAINTENANCE COOPERATIVE AGREEMENT
BETWEEN
THE STATE OF MINNESOTA AND THE CITY OF DULUTH**

This Agreement, between the State of Minnesota, acting by and through the Commissioner of the Department of Natural Resources, hereinafter referred to as the "State" and the City of Duluth hereinafter referred to as the "City".

WITNESSETH:

WHEREAS, the Commissioner of Natural Resources has the authority, duty, and responsibility under Minnesota Statutes Section 97A.141 to provide public access sites on lakes and rivers where access is inadequate; and

WHEREAS, the State and the City are authorized under Minnesota Statutes Section 471.59 to enter into agreements to jointly or cooperatively exercise common powers; and

WHEREAS, the City and the State have determined this Fishing Pier improvement on the St. Louis River at Boy Scout Landing is of high priority under the state public water access program; and

WHEREAS, the City owns land described as: Section 10, Township 48N, Range 15W, St. Louis County, as shown in **Exhibit A** and on the attached map; and

WHEREAS, the State is willing to construct a Fishing Pier to the St. Louis River at Boy Scout Landing; and

WHEREAS, the City will operate and cooperatively maintain the Fishing Pier located on the St. Louis River at Boy Scout Landing, hereinafter referred to as "Facilities"; and

WHEREAS, a resolution or copy of the City council/board meeting minutes authorizing the City to enter into this agreement is attached hereto as **Exhibit B**; and

NOW, THEREFORE, in consideration of the mutual benefits to be derived by the public bodies hereto and for the benefit of the general public, the parties agree as follows:

I. STATE'S DUTIES AND RESPONSIBILITIES

- a. The State will encumber funds for the facility through the standard internal purchasing process including, but not limited to, a separate requisition request.
- b. The State shall provide technical expertise and equipment, when feasible, assistance with the removal of the old pier and installation of the new fishing pier and ADA connection to the parking lot. The State reserves the option to salvage and reuse sections or parts of the old pier.
- c. The State will provide and install the appropriate signage for the site, which indicates that the City and the Department of Natural Resources cooperatively provided the Fishing Pier.
- d. The State shall retain ownership of the Fishing Pier and retains the authority to relocate and/or remove the Fishing Pier if the Site is determined to be inadequate or if the City fails to comply with the terms of the Agreement. Before such removal or relocation, the State shall consult with the City.
- e. The State and City shall cooperate as needed in performing any structural repairs subject to the availability of funding according to the provisions of Article III.

- f. The State reserves the right to inspect the premises at all times to insure that the City is in compliance with the terms of this Agreement.
- g. The State shall take necessary action no earlier than October 15th of each year to protect the Fishing Pier from damage caused by ice action. The City shall detach the gangway from shore, lift the anchor poles and move the fishing pier to a protected bay or other area where the pier is protected from ice push damage. Additionally, the State shall return the Fishing Pier to its original location, the Site, no later than May 1st of each year.

II. CITY'S DUTIES AND RESPONSIBILITIES

- a. The City shall cooperate with the State in removal, demolition and disposal of the existing fishing pier and for the installation of the new Fishing Pier structure.
- b. The City will cooperate with and assist the State as needed or required by applicable laws to assure that the Fishing Pier, path and parking space is maintained so that it meets applicable ADA compliance standards.
- c. The City shall comply with all local, state and federal laws, regulations, rules and ordinances, which may apply to the management, operation, and maintenance of said premises. The City shall obtain any permit or license which may be required for the Fishing Pier.
- d. The Fishing Pier may only be used for fishing, observation and other compatible uses.
- e. The Fishing Pier and related facilities shall be free and remain open every day during open water season in conjunction with the City's established hours for a facility of this type. The City may close the Fishing Pier for emergencies, or for other reasons, without prior written consent of the State. The City shall notify the State within 48 hours of the closing of the Fishing Pier for emergency reasons or if the facility will remain closed longer than 24 hours.
- f. The City shall provide free and adequate parking at the Boy Scout Landing facility. A designated accessible parking space which meets or exceeds ADA requirements shall be established and maintained at all times.
- g. The City shall provide routine police patrols for the Fishing Pier in accordance with the City's established police department policies for a facility of this type.
- h. The City shall assist in the maintenance of the fishing pier facility and keep the overall Boy Scout Landing facility in good and sanitary order in accordance with the City's established practices for maintenance of City park facilities.
- i. The City shall assist the State in taking necessary action no earlier than October 15th of each year to protect the Fishing Pier from damage caused by ice action. The City shall detach the gangway from shore, lift the anchor poles and move the fishing pier to a protected bay ^{or} other area where the pier is protected from ice push damage. Additionally, the City shall return the Fishing Pier to its original location, the Site, no later than May 1st of each year.
- j. The City shall provide funding and related resources to the operation and maintenance of the facility only to the extent that funds and resources are allocated by the Duluth City Council. During the term of this agreement should the City fail to allocate the funding and related resources necessary to fulfill obligations under this agreement the City may terminate this agreement by providing ninety (90) days notice to the State at the address shown in Article XII.

III. FUNDING

The State shall provide funding for its responsibilities under Article I (a), (c), and (e) above through the standard internal purchasing process including, but not limited to, a separate requisition in which funds will be encumbered. The total obligation of the State for the facility under Article I (a) and (e) is limited to the amount of funds legislatively appropriated and administratively allocated to this project.

IV. LIABILITY

Each party agrees that it will be responsible for its own acts and the results thereof to the extent authorized by the law and shall not be responsible for the acts of the other party and the results thereof. The State's liability shall be governed by the provisions of the Minnesota Tort Claims Act, Minnesota Statutes Section 3.736, and other applicable law. The City's liability shall be governed by Minnesota Statutes Sections 466.01-466.15, and other applicable law.

V. TERM

- a. *Effective Date:* **June 1, 2011**, or the date the State obtains all required signatures under Minnesota Statutes Section 16C.05, Subdivision 2, whichever is later. Work under this Agreement shall not begin until it is fully executed. The City and the State will be notified by the State's authorized representative that work can begin.
- b. *Expiration Date:* **May 31, 2036** for a period of twenty five (25) years except as otherwise provided herein or agreed to in writing by both parties. In order to continue this agreement for up to an additional five (5) years, both parties shall agree to amend the above expiration date as stated in Article XI.

VI. AUDIT

Under Minnesota Statutes Section 16C.05, sub. 5, the books, records, documents and accounting procedures and practices of the City relevant to the agreement shall be subject to examination by the Commissioner of Natural Resources, the Legislative Auditor and the State Auditor for a minimum of six years from the end of this agreement.

VII. ANTITRUST

The City hereby assigns to the State any and all claims for overcharges as to goods and/or services provided in connection with this Agreement resulting from antitrust violations that arose under the antitrust laws of the United States and the antitrust laws of the State of Minnesota.

VIII. CANCELLATION

This Agreement may be cancelled by the State at any time with cause or as necessary as provided in Article III, upon ninety (90) days written notice to the City at the address shown in Article XII.

This Agreement may also be cancelled by the State if it does not obtain funding from the Minnesota Legislature, or other funding sources, or if funding cannot be continued at a level sufficient to allow for services covered under this agreement. The State will notify the City by written notice. The State will not be obligated to pay for services provided after the notice is given and the effective date of cancellation. The State will not be assessed any penalty if the agreement is cancelled because of a decision of the Minnesota Legislature, or other funding source, not to appropriate the necessary funds. The State shall provide the City notice of lack of funding within a reasonable time of the State's receiving that notice.

IX. GOVERNMENT DATA PRACTICES

The City and the State must comply with the Minnesota Data Practices Act, Minn. Stat. Ch. 13, as it applies to all data provided by the State under this agreement, and as it applies to all data created, collected, received, stored, used, maintained, or disseminated by the City under this agreement. The civil remedies of Minn. Stat. 13.08 apply to the release of the data referred to in this clause by either the City or the State.

X. PUBLICITY AND ENDORSEMENT

Any publicity regarding the subject matter of this agreement must identify the State as the sponsoring agency and must not be released without prior written approval from the State's Authorized Representative. For purposes of this provision, publicity includes notices, informational pamphlets, press releases, research, reports, signs, and similar public notices prepared by or for the City individually or jointly with others, or any subcontractors, with respect to the program and services provided from this agreement.

XI. COMPLETE AGREEMENT

This Agreement, and amendments, constitutes the entire agreement between the parties. Any amendment to this agreement must be in writing and will not be effective until it has been executed and approved by the same parties who executed and approved the original agreement, or their successors in office.

XII. OTHER TERMS AND CONDITIONS

NOTICES: Any notice, demand or communication under this Agreement by either party to the other shall be deemed to be sufficiently given or delivered if it is dispatched by registered or certified mail, postage prepaid to:

The State

Minnesota Department of Natural Resources
Division of Parks and Trails, Two Harbors Area
1568 Highway 2
Two Harbors, MN 55616

The City

City of Duluth
Department of Administration
411 West 1st Street
330 City Hall
Duluth, MN 55802

IN WITNESS WHEREOF, the parties have caused the Agreement to be duly executed intending to be bound thereby.

DEPARTMENT OF NATURAL RESOURCES

By: _____

Title: _____

Date: _____

DEPARTMENT OF ADMINISTRATION
Delegated to Materials Management Division

By: _____

Title: _____

Date: _____
(Effective Date)

STATE ENCUMBRANCE VERIFICATION
Individual certifies that funds have been encumbered
as req. by Minn. Stat. 16A.15 and 16C.05.

Signed: Laura Ochs

Date: May 23, 2011

Contract: B 56404

CITY OF DULUTH

By: _____

Title: Mayor

Date: _____

CITY OF DULUTH

By: _____

Title: City Clerk

Date: _____

CITY OF DULUTH
Approved as to form:

Assistant City Attorney

City Auditor

